

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Allen III et al. Art Unit : 3653
Serial No. : 10/511,224 Examiner : Mark Hageman
Filed : June 28, 2005
Title : MULTISTEP SEPARATION OF PLASTICS

MAIL STOP PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR §1.144
FROM REQUIREMENT FOR RESTRICTION

Applicant hereby petitions the Commissioner to review the requirement for restriction in the above-identified application, as mailed July 11, 2008, and made "FINAL" in the July 6, 2009 office action issuing in the application.

Specifically, Applicant respectfully requests reconsideration of the restriction as applied to Groups 1-17.

Applicant asserts that the statutory requirements for filing the instant petition have been satisfied because reconsideration of the restriction has been requested (see remarks filed February 26, 2009, and on even date herewith), an election has been made (on August 4, 2008), and the election has been traversed, (October 23, 2008 and February 26, 2009) and the restriction has been made "FINAL" by the examiner.

Background to Petition

A restriction into seventeen groups of claims was mailed July 11, 2008. Applicant timely responded, August 4, 2008, with an election of group 10. On September 23, 2008, the Examiner mailed out a notice stating that the election was not of group 10 as set forth by the Examiner. On October 23, 2008, applicant responded with an amendment to the claims and a traversal of the restriction, with an explanation of the basis for unity of invention of the claims. On January 26, 2009, the Examiner mailed out a new notice stating again that the submission claimed to elect group 10 from the restriction requirement but that the Examiner found that not to be the case. Applicant responded on February 26, 2009, explaining that while group 10 had been elected, all

of the pending claims read on group 10 and further, that the restriction was improperly based on classifications of claims rather than unity of invention. The restriction was made "final" in an office action mailed July 6, 2009.

Reconsideration of the Restriction as Applied to the Seventeen Groups

In the restriction mailed July 11, 2008, the Examiner asserted that that the inventions listed as Groups 1-17 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. The Examiner found that each subset of claims directed to different details of the process set forth their own technical feature as outlined in the groups 1-17.

As submitted in the response of February 26, 2009, applicant notes that the claims have unity of invention because they each require the same or corresponding technical features, that is, of a sequence of steps including a separation process which separates a first plastic type from a second plastic type and is enhanced by narrow surface to mass distribution following a surface to mass control process. The Examiner used classification of the claims limitations rather than the special technical feature to find that the claims lack unity.

Even assuming *arguendo* that the claims lacked unity of invention, the restriction was still improper. The claims the Examiner *argues* group 10 excludes, *do not exclude* triboelectric separation from the processes that are enhanced by narrow surface to mass distribution. Rather, these claims are silent with respect to the processes encompassed by a separation process . . . enhanced by narrow surface to mass distribution. Therefore, applicant submits that group 10 reads on all of the pending claims.

Conclusion

Applicant has timely traversed the various restrictions in place in the instant application. Applicant timely responds, on even date herewith, with a request for reconsideration of the restriction as currently articulated under 37 C.F.R. § 1.144, in connection with a response under 37 C.F.R. § 1.111. Applicant also states that the arguments presented herein are not be construed as an admission that any of the claims of are obvious over, or are not patentably distinct from one another.

No fee is believed owing with this petition. However, should the Commissioner determine otherwise, he is authorized to charge any required fee to Deposit Account No. 06-1050 (ref. 10887-0010US2).

Respectfully submitted,

Date: _____

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